

(16,258.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 158.

BUILDING AND LOAN ASSOCIATION OF DAKOTA,
APPELLANT,

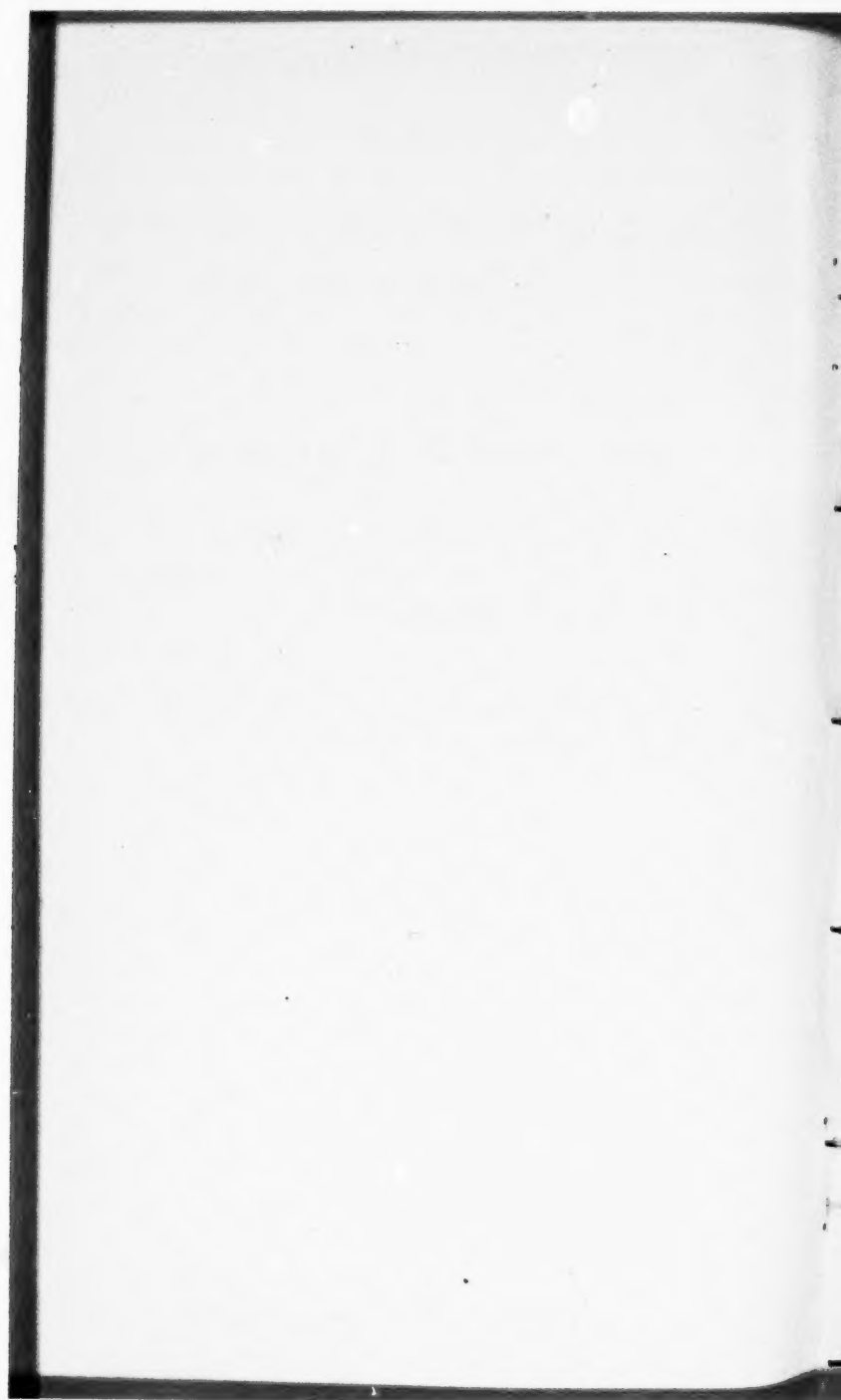
vs.

M. S. PRICE ET AL.

• APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF TEXAS.

INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	2	1
Amendment to bill	12	7
Appearance for defendant Luna	12	7
Demurrer of defendant Luna	13	7
Decree	15	9
Assignment of errors	16	9
Petition for appeal	17	10
Bond on appeal	18	11
Order allowing appeal and certificate of question of jurisdiction	20	12
Clerk's certificate	21	12



1

Caption.

Be it remembered that at a term of the circuit court of the United States, in the fifth circuit thereof, and in and for the northern district of Texas, at Dallas, begun and holden at Dallas, Texas, on the 13th day of January, A. D. 1896, and which term adjourned on the 24th day of March, A. D. 1896—present and presiding, the Honorable Andrew P. McCormick, United States circuit judge for the fifth judicial circuit—upon and during the trial of the cause hereinafter named the following proceedings were had and the following cause came on for trial and was tried, to wit:

Style of Cause.

BUILDING AND LOAN ASSOCIATION OF DAKOTA	} No. 362. In Equity.
<i>vs.</i>	
M. S. PRICE <i>et al.</i>	

2

Complaint.

Filed Oct. 3, 1895.

In the Circuit Court of the United States for the Northern District of Texas, Holding Sessions at Dallas, Texas.

BUILDING AND LOAN ASSOCIATION OF DAKOTA	} In Equity.
<i>vs.</i>	
M. S. PRICE and H. M. PRICE <i>et al.</i>	

To the honorable judges of the circuit court in and for the northern district of Texas:

The Building and Loan Association of Dakota, a corporation duly and legally incorporated under and by virtue of the laws of the State of South Dakota, having its principal place of business in the city of Aberdeen, county of Brown and State of South Dakota, brings this its bill of complaint against M. S. Price and her husband, H. M. Price, and Bertha Rothschild, W. B. Luna, and Sophia Miller, all of whom are resident citizens of the State of Texas and of the county of Dallas, in said State.

And thereupon your orator, complaining, says that heretofore, on, to wit, on or about the first day of January, 1890, one Jacob Rothschild, now deceased, made application for membership in your orator's association and subscribed for forty shares of the capital stock thereof, which application was accepted, and on or about said first day of January, 1890, a certificate for said forty shares of the capital stock of your orator was by it duly issued and delivered to the said Jacob Rothschild, who paid the subscription or admission fee due thereon, which certificate was issued and delivered, and the said Jacob Rothschild accepted and received the same upon the terms and conditions therein set forth, and thereupon he became a

member of your orator and the owner and holder of forty shares of its capital stock.

3 2nd. Your orator further shows that according to the terms and conditions of said certificate of stock so issued and accepted by the said Jacob Rothschild he agreed and promised to pay to your orator on the first day of each and every month after its said date the sum of sixty cents (60 cts.) for each and every share so held by him until such shares shall become fully matured and of the value of one hundred dollars per share.

3rd. Your orator further shows that on or about the said first day of January, 1890, the said Jacob Rothschild, being then and there a stockholder in your orator and entitled under the rules, regulations, and by-laws to make application for an advancement on his said stock, made his application to your orator for an advancement of two thousand dollars in anticipation of the maturity value of his said forty shares of stock, and in competition with other bidders for the funds of your orator bid as a premium for the privilege of obtaining such advancement the sum of fifty dollars per share and offered as security for the continued payment for the monthly dues on said forty shares of stock and the interest on said advancement the real estate hereinafter described; and your orator further shows that said application and bid were made in accordance with the rules, regulations, and by-laws of said association and were duly accepted and approved by your orator's board of directors, and the advancement applied for was duly made, and the amount due thereon was duly paid to the said Jacob Rothschild; that said advancement was made by your orator on the faith and in the expectation that the said Rothschild would, according to his agreement, continue the monthly payment on his said forty shares of stock until such stock should have become fully matured and of the value of one hundred dollars per share.

4 4th. Your orator further shows that on or about the first day of February, 1890, the said Jacob Rothschild and the defendant Bertha Rothschild, for and in consideration of the advancement so made and for the purpose of securing the continued payment of the monthly dues on said stock, made, executed, and delivered to your orator and thereby promised and agreed to comply with the terms of a bond, of which the following is substantially a copy:

"Know all men by these presents, that Jacob Rothschild and Bertha Rothschild, his wife, of the county of Dallas, and State of Texas, — held and firmly bound unto the Building and Loan Association of Dakota, of the city of Aberdeen, and State of South Dakota, in the sum of four thousand (\$4,000.00) dollars, lawful money of the United States of America, to be paid to the said association, its certain attorney, successors or assigns, at its home office in Aberdeen, South Dakota, to which payment well and truly to be made we bind ourselves and our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated at Aberdeen, South Dakota, this first day of February, one thousand, eight hundred and ninety.

The condition of this obligation is such that, whereas, said Jacob Rothschild has bid, in accordance with the by-laws of said association, the sum of two thousand (2,000) dollars, as and for a premium for the advancement to him by said association of two thousand dollars, by way of anticipation of the value, at their maturity of forty shares of the capital stock of said association, now owned by said Jacob Rothschild; and, whereas, said association has this day advanced to said Jacob Rothschild the sum of two thousand dollars, in consideration of said premium, and by way of said anticipation:

5 Now, therefore, if the above-bounden Jacob Rothschild and Bertha Rothschild their heirs, executors and administrators, or any of them, shall well and truly pay or cause to be paid unto the said association, its certain attorney, successors or assigns, at its home office, on or before nine years from date hereof, the just sum of four thousand dollars, as aforesaid, together with interest on two thousand dollars, at the rate of six per cent. per annum, from the first day of February A. D. 1890, until paid, payable monthly in advance; or shall well and truly pay, or cause to be paid, unto said association, its certain attorney, successors or assigns, at its said home office, the sum of twenty-four and $\frac{00}{100}$ dollars, on the first day of each and every month hereafter, as and for the monthly dues on said forty shares of capital stock of said association now owned by the said Jacob Rothschild and by him hereby sold, assigned, transferred and set over to said association as security for the faithful performance of this bond, and shall also well and truly pay, or cause to be paid, all installments of interest aforesaid, and all fines which become due on the said stock, without any fraud or further delay, until said stock becomes fully paid in and of the value of one hundred dollars per share, and shall then surrender said stock to said association; then, and in either of such cases, the above obligation to be void, otherwise of full force and virtue.

Provided, however, and it is hereby expressly agreed, that, if, at any time, default shall be made in the payment of said interest, or the said monthly dues on said stock, for the space of six months after the same, or any part thereof, shall have become due, or if the taxes, and assessments on the property mortgaged to secure the faithful performance of this bond, be not paid when due, or

6 if the insurance policy or policies on the said mortgage-property be allowed to expire without renewal, then, and in either or any such case, the whole principal sum aforesaid shall, at the election of said association, its successors or assigns, immediately thereupon become due and payable, and the sum of four thousand dollars, less whatever sum has been paid said association, as and for the monthly dues on said forty shares of said capital stock, at the time of said default, may be enforced and recovered at once as liquidated damages, together with and in addition to, all interest and fines then due, and all costs and disbursements, including said taxes, insurance and assessments, which have been paid by said

association, anything hereinbefore contained to the contrary notwithstanding.

(Signed)

JACOB ROTHSCHILD.

[SEAL.]

BERTHA ROTHSCHILD.

[SEAL.]

Signed, sealed, and delivered in presence of—

W. L. HALL.

C. S. CRYSLER."

5th. Your orator would further show that on the first day of February, 1890, the said Jacob Rothschild and the defendant Bertha Rothschild, in order to better secure your orator for the money advanced by your orator as aforesaid and in all their agreements, obligations, and contract as aforesaid, made, executed, and delivered to your orator their certain mortgage or deed of trust, with power of sale, in which Chas. S. Cryslar was made trustee, on the following-described tract or lot of land, situated in the city of Dallas, county of Dallas and State of Texas, and more particularly described as follows:

In the John Grigsby league and labor head-light survey, and being a part of a lot deeded to Margaret Crane by John S. Hereford on the twentieth (20th) day of February, eighteen hundred and seventy-nine (1879), as per deed recorded in Book Forty-nine (49), pages three hundred thirty-nine and three hundred forty (339, '40), of the records of deeds, etc., of Dallas county, Texas, beginning at a point in the east line of Harwood street at the southern corner of said lot, deeded to said Margaret Crane by said John S. Hereford, thence north forty-five east with the southeast line of said lot one hundred forty (140) feet to corner; thence north forty-five west parallel to Harwood street fifty feet to corner; thence south forty-five west one hundred forty (140) feet to said northeast line of Harwood street; thence south forty-five east fifty (50) feet with said Harwood street to the place of beginning; which deed of trust was duly recorded on the eleventh day of March, 1890, in volume 42, page 195, of the Records of Mortgages and Deeds of Trust in Dallas county, Texas.

6th. Your orator would further show that it is recited in said deed of trust, among other things, that the said Jacob Rothschild is a member of the Building and Loan Association of Dakota and is the owner of forty shares of the capital stock thereof, the monthly payments of which amount for \$24.00; and it is further recited that said deed of trust is given for the purpose of securing the aforesaid bond, the nature of which bond is fully set forth in said deed of trust.

7th. Your orator would further show that it is stipulated in said deed of trust that if the said defendants shall well and truly pay or cause to be paid the sum of four thousand dollars, together with the interest above specified, within the time and in the manner as in said bond specified, or shall pay or cause to be paid, at the home office of said association, the installments of interest as they become due on said stock until said stock becomes fully

paid in and of the value of one hundred dollars per share, and before any of said installments of interest or monthly payments shall have been past due for a period of sixty (60) days, and shall then surrender said stock to said association in payment of said bond, and shall pay the taxes and assessments and shall keep and perform all and every of the conditions of said bond, then this deed shall be void and the property hereinbefore conveyed shall be released at the cost of the parties executing the said bond, but otherwise to continue in full force and effect; but if default be made in the payment of said sum or sums of money or any installment of interest thereon or of any monthly payment or of any monthly payment of stock for the period of sixty (60) days after the same shall be due or any part of either or in the payment of taxes at the time or times specified for payment or in any condition in said deed of trust contained, then or in either or any such case the whole principal sum or sums secured by this trust deed and the interest thereon accrued up to the time — such default shall, at the election of your orator, its successors or assigns or its or their agent, become thereupon due and payable immediately upon said default. Whereupon the trustee in said trust deed is authorized and empowered to sell said premises in accordance with the stipulations contained in said instrument, and with the proceeds of said sale to pay the expenses of sale and all sums of money due by the terms of said bond so in default, with all interest due thereon, and all taxes, if any, due to said association.

8th. Your orator further shows that said forty shares of stock have not been withdrawn, nor have they matured or become of the par value of one hundred dollars per share; that subsequent
9 to the execution, delivery, and record of the aforesaid deed of trust the said Jacob Rothschild and Bertha Rothschild conveyed the aforesaid premises to the defendant Sophia Miller, who, as a part of the purchase price for said premises, assumed and agreed to pay the said bond in the sum of four thousand dollars, secured by the aforesaid deed of trust lien, retaining a vendor's lien in said deed of conveyance to secure the payment of the aforesaid sum of four thousand dollars; that subsequently the said Sophia Miller conveyed said premises in like manner to the defendant M. S. Price as her separate property, who, as a part of the purchase price therefor, assumed and agreed to pay said bond secured by said deed of trust lien, said Sophia Miller retaining a vendor's lien for the payment thereof and for the payment of other portions of the purchase-money, by virtue of which she may claim some interest in the aforesaid premises; that W. B. Luna also claims some interest in the aforesaid premises, which interest, if any, is subsequent and inferior to that of your orators.

Your orator further alleges that it is now the owner and holder of the said bond and deed of trust. Your orator further shows that the said defendants have not paid said principal sum of \$4,000 nor any part thereof; that the said defendants have not continually paid the monthly dues on said forty shares of stock nor the monthly installments of interest as provided in said bond, but that defend-

ants have paid no part of said dues or interest except the sum of twelve hundred dollars (\$1,200.00) as and for the said monthly dues for the months of February, 1890, to and including the month of March, 1894, and the further sum of \$500.00 as and for the interest, as in said bond provided, for the months of February, 1890, to and including the month of March, 1894.

10 Your orator further shows that default has been made in the payment of the monthly dues on said forty shares of stock and the monthly installment of interest on said advancement; that more than six months have elapsed since the first monthly installment of interest and dues so in default became due and payable, and your orator elects to declare the whole sum named in and secured by said bond and deed of trust to be immediately due and payable.

9th. Your orator further shows that there is now due and owing your orator from Bertha Rothschild, Sophia Miller, H. M. and M. S. Price under and by virtue of the terms of said bond the sum of four thousand dollars (\$4,000.00), less the sum of twelve hundred dollars (\$1,200.00) paid to your orator as the monthly dues on said forty shares of capital stock at the time of the aforesaid default, aggregating \$2,800.00, together with and in addition to interest on two thousand dollars, at the rate of six per cent. per annum, from April 1st, 1894.

10th. Your orator would further show that the said Chas. S. Cryslor, trustee in the said deed of trust, has removed from the said county of Dallas and the State of Texas; that his whereabouts are unknown to your orator, and that he is unable to execute the trust according to the power conferred on him in said instrument.

Wherefore your orator files this its bill and prays your honors to grant *its* most gracious writ of subpoena, to be directed to the said M. S. Price, H. M. Price, Bertha Rothschild and Sophia Miller, commanding them personally to be and appear before your honors in this honorable court and to answer all and singular the premises, answer under oath being dispensed with, and to abide such order and decree therein as to your honors may seem meet.

Upon final hearing your orator prays for decree against the defendants M. S. Price, Bertha Rothschild, and Sophia Miller
11 for its aforesaid debt and said damages and costs of this suit and for a decree of foreclosure against all the defendants, and also against the defendants H. M. Price and W. B. Luna under the mortgage and vendor's lien on the above-described premises, and for an order of sale of the said premises, and for all such other and further relief as to your honors may seem just and proper, and for which your orator will ever pray.

C. W. STARLING,

Attorney for Complainant.

The foregoing has the following endorsement, to wit:

No. 362. Equity. Building & Loan Association of Dakota vs. M. S. Price *et al.* Complaint. Filed Oct. 3, 1895. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

12 *Amendment to Bill Making W. B. Luna a Respondent.*

Filed Jan. 20, 1896.

In the Circuit Court of the United States in and for the Northern
District of Texas, at Dallas.

BUILDING & LOAN ASS'N OF DAKOTA	}	Equity. No. 362.
<i>vs.</i>		
M. S. PRICE <i>et al.</i>		

And now comes the plaintiff and, with leave of the court first had and obtained, amends *his* bill of complaint herein as follows:

Add to paragraph 9 of said bill the following words: "Your orator further shows that W. B. Luna, a resident and citizen of the city and county of Dallas, claims some interest in the aforesaid premises, which interest, if any, is subsequent and inferior to the lien of your orator."

In paragraph 10 of said bill after the names of the other defendants insert the name "W. B. Luna."

C. W. STARLING,
Solicitor for Plaintiff.

The above-named defendant, W. B. Luna, comes now, by his attorney, T. E. Conn, and accepts service and enters his appearance herein, saving all rights as to time and manner of demurrer, plea, or answer.

T. E. CONN,
Solicitor for Defendant W. B. Luna.

Endorsement: Equity. No. 362. Building & Loan Ass'n of Dakota *vs.* M. S. Price *et al.* Amendment to bill making W. B. Luna part defendant. Filed Jan. 20, 1896. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

13 *Demurrer of W. B. Luna.*

Filed M'ch 2, 1896.

Circuit Court of the United States for the Northern District of
Texas.

BUILDING AND LOAN ASSOCIATION OF DAKOTA	}	In Equity.
<i>vs.</i>		
M. S. PRICE <i>et al.</i>		

The demurrer of W. B. Luna, one of the defendants, to the bill of the above-named complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in said bill of complaint contained to be true in such manner and form as the same are therein

set forth and alleged, doth demur to the said bill and for causes of demurrer sheweth:

1. That it appeareth by the said bill on complainant's own showing that this court has no jurisdiction of the said bill nor the several subject-matters therein set forth nor of any of said matters.

2. That the bond exhibited in complainant's bill on page 3 of said bill and upon which said bill is sought to be sustained is a common-law penal obligation and shows upon its face a loan of two thousand dollars, an amount not within the jurisdiction of this court.

3. That said bond alleges and recites the performance of certain conditions and contingencies to be performed within nine years, to wit, the maturing of forty shares of stock and payment of interest on \$2,000.00, and provides for its discharge upon the contingency of a maturity and surrender of said stock, and therein is a penal obligation not enforceable in equity.

4. That said bill shows that \$500.00 interest and \$1,200.00 on stock has been paid by defendant and shows that less than \$2,000.00 are involved in this controversy.

5. That complainant nowhere alleges an amount in controversy of more than 2,000.00, except in paragraph 8 of said bill, which seek- the enforcement of a common-law penalty for some alleged default, which said penalty is non-enforceable in equity.

Wherefore defendant prays the court whether he be required to answer further.

T. E. CONN,

Solicitor for Defendant W. B. Luna.

I, T. E. Conn, solicitor and counsel in this court, do hereby certify that I believe the foregoing demurrer to be well taken in point of law.

T. E. CONN.

W. B. Luna, the above-named defendant, on oath says that the foregoing demurrer is not interposed for delay.

W. B. LUNA.

Signed and sworn to before me this M'ch 2, 1896.

J. H. FINKS, *Clerk,*

By CHAS. H. LEDNUM, *Deputy.*

The foregoing has the following endorsement, to wit:

362. In equity. Building and Loan Association of Dakota vs. M. S. Price *et al.* Demurrer of W. B. Luna. Filed M'ch 2, 1896. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

15

Decree Dismissing Bill.

Filed Mar. 17, 1896.

In the Circuit Court of United States in and for the Northern
District of Texas, at Dallas.

BUILDING AND LOAN ASSOCIATION OF DAKOTA	} No. 362. Equity.
<i>vs.</i>	
M. S. PRICE <i>et al.</i>	

Decree dismissing suit.

This cause having come on to be heard this 17th day of March, 1896, on a demurrer of the respondents to the bill of the complainants, in which demurrer the jurisdiction of the court is challenged, and the parties having been heard by their respective counsel, and the court being fully advised in the premises, it is ordered, adjudged, and decreed that the bill of the complainant herein be dismissed for want of jurisdiction of the subject-matter in controversy, but without prejudice, with costs to the defendants to be taxed; to which order and decree complainant then and there excepted; which exception is here allowed.

A. P. McCORMICK,
Circuit Judge.

The foregoing has the following endorsement, to wit:

Equity. No. 362. Building and Loan Association of Dakota *vs.*
M. S. Price *et al.* Decree dismissing bill. Filed Mar. 17, 1896.
J. H. Finks, clerk, by Chas. H. Lednum, deputy.

16

Complainant's Assignment of Errors.

Filed Mar. 24, 1896.

In the Circuit Court of the United States in and for the Northern
District of Texas, at Dallas.

BUILDING & LOAN ASSOCIATION OF DAKOTA	}
<i>vs.</i>	
M. S. PRICE <i>et al.</i>	

Complainant's assignment of errors.

Now, on this 18th day of March, 1896, came the complainant, by C. W. Starling, its solicitor, and says that the order and decree in said cause dismissing said complainant's bill for want of jurisdiction of the subject-matter in controversy is erroneous and against the just rights of complainant for the following reasons:

1st. The bill shows that this court had jurisdiction of the subject-matter in controversy.

2nd. The bill shows that the matter in dispute exceeds, exclusive of interest and costs, the sum of two thousand dollars (\$2,000.00).

3rd. The bill shows that the controversy is between citizens of different States.

Wherefore complainant prays that the said decree be reversed, and that this cause be remanded with instructions to proceed therewith.

C. W. STARLING,
Solicitor for Complainant.

The foregoing has the following endorsement, to wit :
Equity. No. 362. Building and Loan Association of Dakota *vs.*
M. S. Price *et al.* Complainant's assignment of errors. Filed Mar.
24, 1896. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

17

Petition Praying Appeal.

Filed Mar. 24, 1896.

In the Circuit Court of the United States in and for the Northern
District of Texas, at Dallas.

BUILDING & LOAN ASSOCIATION OF DAKOTA	}	Petition Praying Ap- peal.
<i>vs.</i> M. S. PRICE <i>et al.</i>		

The above-named complainant, conceiving itself aggrieved by the order and decree made and entered on the 17th day of March, 1896, dismissing the above-entitled cause for want of jurisdiction, does hereby appeal from said order and decree to the Supreme Court of the United States, as authorized by section V of the act of Congress of the United States approved March 3rd, 1891, and petitioner herewith files its bond in the penal sum of one hundred dollars, which bond is approved by Honorable A. P. McCormick, one of the judges of this court.

Petitioner prays that this appeal may be allowed ; that the question of jurisdiction of this court may be certified to the Supreme Court of United States, as provided by law, and that all records, proceedings, and papers upon which said order and decree was so made, duly authenticated, may be sent to the Supreme Court of United States.

Dated Dallas, Texas, March 23rd, 1896.

C. W. STARLING,
Solicitor for Complainant.

The foregoing has the following endorsement, to wit :
Equity. No. 362. Building & Loan Association of Dakota *vs.*
M. S. Price *et al.* Petition praying appeal. Filed Mar. 24, 1896.
J. H. Finks, clerk, by Chas. H. Lednum, deputy.

18

Appeal Bond.

Filed Mar. 24, 1896.

In the Circuit Court of the United States in and for the Northern District of Texas, at Dallas.

BUILDING & LOAN ASSOCIATION OF DAKOTA	} Appeal Bond.
<i>vs.</i>	
M. S. PRICE <i>et al.</i>	

Know all men by these presents that we, The Building and Loan Association of Dakota, as principal, and C. W. Starling, as surety, are held and firmly bound unto M. S. Price, H. M. Price, Bertha Rothschild, and M. B. Luna in the sum of one hundred dollars, to be paid to the said M. S. Price, H. M. Price, Bertha Rothschild, and M. B. Luna, their heirs, executors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, successors, administrators, and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 18th day of March, 1896.

The condition of the above obligation is such that whereas lately, at a circuit court in and for the northern district of Texas, at Dallas, Texas, aforesaid, in a suit pending in said court between The Building and Loan Association of Dakota, complainant, and M. S. Price and others, respondents, a final decree was rendered against the Building and Loan Association of Dakota, and the said Building and Loan Association having taken an appeal, which appeal has been allowed by the circuit court, to the Supreme Court of the United States to reverse the said decree in the aforesaid suit:

Now, therefore, the condition of this obligation is such that if the said Building and Loan Association of Dakota shall prosecute its said appeal to effect and answer all damages and costs occasioned to the said M. S. Price, H. M. Price, Bertha Rothschild, and M. B. Luna, if it fails to make its appeal good, then this obligation be null and void; otherwise to remain in full force and virtue.

Witness our hands this the 18th day of March, A. D. 1896.

BUILDING AND LOAN ASSOCIATION
OF DAKOTA,

Per C. W. STARLING, *Agent*.
C. W. STARLING.

Approved March 24, 1896.

A. P. McCORMICK,
Circuit Judge.

The foregoing has the following endorsement, to wit:

Equity. No. 362. Building and Loan Association of Dakota *vs.* M. S. Price *et al.* Appeal bond. Filed Mar. 24, 1896. J. H. Fuks, clerk, by Chas. H. Lednum, deputy.

20

Order Allowing Appeal.

Filed Mar. 24, 1896.

In the Circuit Court of United States in and for the Northern District of Texas, at Dallas.

BUILDING AND LOAN ASSOCIATION OF DAKOTA vs. M. S. PRICE <i>et al.</i>	}	Order Allowing Appeal.
--	---	------------------------

Upon consideration of the petition for appeal to the Supreme Court of the United States, filed herein by the complainant, Building & Loan Association of Dakota, it is ordered that said appeal be granted, bond therefor in the penalty of one hundred dollars having been executed and approved by the court. This appeal is granted solely upon the question of jurisdiction, and the question as to whether or not the circuit court has jurisdiction of the subject-matter in controversy is hereby certified to the Supreme Court of United States.

This appeal is prayed and allowed in open court at the term at which the judgment appealed from was rendered.

Dated this 24th day of March, A. D. 1896.

A. P. McCORMICK,
Circuit Judge.

The foregoing has the following endorsement, to wit:

Equity. No. —. Building and Loan Association of Dakota vs. M. S. Price *et al.* Order allowing appeal. Filed Mar. 24, 1896. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

21

Certificate of Clerk.

I, J. H. Finks, clerk of the circuit court of the United States in the fifth circuit and northern district of Texas, do hereby certify that the above and foregoing is a full, true, and correct transcript of the record, assignment of errors, and all the proceedings in cause No. 362, in equity, wherein Building and Loan Association of Dakota is complainant and M. S. Price and others are respondents, as fully as the same remains on file and of record in my office, at Dallas, Texas.

Witness my hand officially and the seal of said court, at Dallas, Texas, this the 8th day of April, A. D. 1896.

{ The Seal of the U. S. Circuit Court, Northern }
Dist. Texas, Dallas.

J. H. FINKS, *Clerk*,
By CHAS. H. LEDNUM, *Deputy*.

Endorsed on cover: Case No. 16,258. N. Texas C. C. U. S. Term No., 158. Building & Loan Association of Dakota, appellant, vs. M. S. Price *et al.* Filed April 17, 1896.

